

IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF	:	STATE BOARD OF EXAMINERS
KENNETH MILLER	:	ORDER OF REVOCATION
_____	:	DOCKET NO: 536-09/99-222

At its meeting of September 23, 1999, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Kenneth Miller from his tenured position with the Board of Education of Bound Brook for charges of unbecoming conduct. Miller currently holds a Teacher of Health and Physical Education certificate.

This case originated when the Bound Brook Board of Education certified tenure charges against respondent, Kenneth Miller. The district charged him with unbecoming conduct. Specifically, Miller was charged with twelve incidents of corporal punishment or inappropriate touching of students.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Beatrice S. Tylutki heard testimony on several days in April and May 1998. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on November 9, 1998.

In that decision ALJ Tylutki found that Miller had struck a sixth grade student with a hockey puck and conveyed to the student that it was childish to report the incident to the school principal. She therefore concluded that Miller's conduct exhibited a reckless disregard for student safety and was conduct unbecoming a teacher. (Initial Decision, slip op. at 6). The ALJ also found that Miller had gotten physical with another student. (Initial Decision, slip op. at 10). In addition, ALJ Tylutki held that Miller had touched certain students in an inappropriate manner even after being told by his superiors not to touch students. (Initial Decision, slip op. at 22). Finally, the ALJ also found that Miller had engaged in at least one incident of corporal punishment; the ALJ determined that that was conduct unbecoming a teacher. (Initial Decision, slip op. at 33).

After considering all the testimony, ALJ Tylutki found that Miller's conduct was improper. The Judge found that Miller had touched students in an inappropriate manner, in some instances with enough force to be deemed corporal punishment. (Initial Decision, slip op. at 33-36).

Thus, based on her review of the entire record, the ALJ concluded that Miller's breach was too substantial to allow for his continued employment in the district. (Initial Decision, slip op. at 36). Consequently, the ALJ ordered Miller dismissed from his tenured employment.

In a decision dated December 28, 1998, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Miller. The Commissioner agreed with the ALJ that the local board had proven its case against Miller with regard to the sustained tenure charges of unbecoming conduct. (Commissioner's Decision, slip op. at 46). The Commissioner also held that the ALJ's determination with regard to the penalty assessed was also appropriate since it was "well-reasoned and supported by the record." (Commissioner's Decision, slip op. at 49). Accordingly, the Commissioner affirmed Miller's removal from his tenured employment with the Bound Brook Board of Education and transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Miller's certificate. Miller appealed the decision to the State Board of Education which affirmed the Commissioner's Decision on May 5, 1999. (State Board of Education Decision, slip op. at 1).

Thereafter, on September 23, 1999, the State Board of Examiners issued Miller an Order to Show Cause why his certificates should not be or suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Order to Show Cause was mailed to Respondent by regular and certified mail on November 5, 1999. The Order provided that an Answer must be filed within 20 days. Miller did not respond to the Order.

Thereafter, on December 29, 1999 Miller was provided an additional ten days to file a response to the Order to Show Cause. He was advised that if no response was received, the allegations in the Order to Show Cause would be deemed admitted and the State Board of Examiners would proceed to a decision on revocation or suspension on the basis of the evidence before it. Once again, Miller did not respond.

The threshold determination before the State Board of Examiners in this matter, therefore, is whether Miller's conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of May 11, 2000, the State Board of Examiners reviewed the charges in the Order to Show Cause. Since Miller did not respond to the Order to Show Cause, the State Board of Examiners had no responsive pleading to consider in the hearing process. It is therefore ORDERED that the charges in the

Order to Show Cause are deemed admitted for the purpose of this proceeding. N.J.A.C. 6:11-3.6(a)1. Since Miller's unbecoming conduct is admitted, the Board of Examiners must now decide whether that constitutes a sufficient basis to act against his certificate pursuant to N.J.A.C. 6:11-3.6(a)1. We find that it does.

The State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. N.J.A.C. 6:11-3.4. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Bd. of Educ., 130 N.J.L. 369, 371 (S. Ct. 1943), aff'd. 131 N.J.L. 326 (E & A 1944). Teachers in the State of New Jersey "are professional employees to whom the people have entrusted the care and custody of ... school children....This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." Tenure of Sammons, 1972 S.L.D. 302, 321. There can be no dispute that Miller's repeated acts of inappropriate touching and corporal punishment negates any claim he can have to self-restraint. His inability to control his temper or interact with students in a calm manner speaks volumes about his lack of control. This volatility does not belong in a classroom. Thus, the only proper response to Miller's breach is revocation.

Accordingly, it is therefore ORDERED that Kenneth Miller's Teacher of Health and Physical Education certificate be revoked on this 11th day of May 2000. It is further ORDERED that Miller return his certificate to the Secretary of the State Board of Examiners, Office of Licensing, CN 500, Trenton, NJ 08625-0500 within fifteen (15) days of receipt of this decision.

Secretary
State Board of Examiners

Date of Mailing: October 11, 2000

Appeals may be made to the State Board of Education pursuant to the provisions of N.J.S.A. 18A:6-28.

IBG:MZ:kb:Miller Kenneth